

## **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

This **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS** is entered into on February 13<sup>th</sup>, 2019, by Complainants Carl Carson, Jasmina Nogo, Hope Williams, and Jennifer Story (collectively the "Complainants"), on behalf of seven (7) Wake County Public School System ("WCPSS" or "District") students, Z.D., T.C., Z.S., J.S., J.H., K.L.S., and K.D., and the Wake County Board of Education ("Board"). The Complainants and the Board are collectively referred to as the "parties".

**WHEREAS**, the seven named students were all students in the WCPSS during the 2017-2018 school year and have been identified as students with disabilities ("SWD") with either a mental health diagnosis and/or related behavior needs;

**WHEREAS**, by virtue of such identification as SWD, each is entitled, pursuant to state and federal law, to an Individualized Education Program ("IEP") that is designed to provide each with an opportunity for a free, appropriate, public education ("FAPE") in the least restrictive environment ("LRE");

**WHEREAS**, each of the seven named students was identified by their respective IEP team as having behavior that impedes the child's learning or that of others;

**WHEREAS**, the Complainants, on behalf of the seven named students and other students similarly situated, filed a complaint with the North Carolina Department of Public Instruction ("DPI"), in which they allege that the Board violated various provisions of the Individuals with Disabilities Education Act ("IDEA") and state law by failing to: conduct adequate functional behavior assessments ("FBAs") and implement adequate behavior intervention plans ("BIPs"); conduct timely manifestation determination reviews ("MDRs"); provide continuation of services beginning on the 11<sup>th</sup> cumulative day of suspension; consider and provide appropriate related services; conduct appropriate progress monitoring and reporting; timely provide transportation to students with disabilities; and offer a continuum of services for students with mental health disabilities, all resulting in continued behavior challenges for the students, denial of access to a FAPE, and recommendations for inappropriately restrictive environments;

**WHEREAS**, the Complainants further allege that the WCPSS repeatedly failed to convene IEP team meetings with properly constituted IEP teams for students in alternative learning programs;

**WHEREAS**, the Complainants further allege that the WCPSS failed to revise the IEPs of students in temporary, behavior-related placements to match the services they actually receive, resulting in significant IEP non-implementation and data disparities;

**WHEREAS**, the Complainants further identify seven students they contend are representative of alleged, district-wide violations; however, not all alleged violations are identified for each student;

**WHEREAS**, DPI identified the following five issues for its investigation: whether the Board followed the North Carolina *Policies Governing Services for Children with Disabilities* (the "Policies") regarding (1) discipline procedures; (2) appropriate IEP team members; (3) development of the IEP; (4) implementation of the IEPs; and (5) least restrictive environment;

**WHEREAS**, the parties agree to resolve outstanding disputes between the parties related to the provision of educational services for the seven named students and other SWD with mental health diagnoses or other behavior-related needs as identified by their IEP team, including all concerns raised in the underlying Complaint filed with DPI, through mutual agreement and without the need for further investigation by DPI, and have agreed in good faith to resolve these matters through the execution of this Settlement Agreement in order to prevent protracted litigation.

**NOW, THEREFORE**, in consideration of the mutual promises and releases contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. **Definitions.** To the extent the following terms are used in this Agreement, the terms are intended and understood by both parties to refer to the following positions:
  - a. **School-Based SES Staff.** This includes the positions of Special Education Department Chairs, Special Education Case Managers, School Psychologists, and Behavior Support Teachers.
  - b. **District-Level SES Staff.** This includes the positions of Coordinating Teachers, Behavior Support Team Specialists, Low-Incident Support Teachers, Directors, and Senior Administrators in the Department of Special Education Services.
2. **Conducting Timely Manifestation Determination Review Meetings.** In an effort to improve the scheduling and timely completion of MDRs, the WCPSS will provide face-to-face and/or Canvas training to all Principals, Assistant Principals, School-Based SES Staff and District-Level SES Staff, regarding MDR procedures and timelines by February 28, 2019.
3. **Provision of Educational Services by the 11<sup>th</sup> Day of Disciplinary Removals.** Both federal and state law and regulations mandate that after a student has been removed for disciplinary purposes from his current placement for ten cumulative school days in the same school year, beginning on the 11<sup>th</sup> day of removal, the District must offer to the child uninterrupted access to educational services that will enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.
  - a. As of October 15, 2018, the District has developed and deployed a monitoring system for suspensions of SWD who meet or exceed 6 days of suspension during the academic school year.
  - b. The District will review and revise current protocol for the continuation of appropriate, individually-tailored special education services beginning on the 11<sup>th</sup> cumulative day of suspension. The updated protocol will also ensure that, in the event a student is not provided with uninterrupted access to educational services, the student is promptly offered individually crafted compensatory services based on the student's unique needs and IEP goals. The revised protocol will continue to include a clear statement outlining the district's obligations for educational services to continue on day 11 as described above.
4. **Transportation for SWD Placed in Alternative Learning Programs.** The District will review and revise the current process by which the Transportation team is notified of

alternative service placement to improve response time, for implementation of the new revisions to begin at the start of the second semester of the 2018-2019 school year. Services will be in place for students no later than five school days following the student's assignment to an Alternative Learning Program. A copy of the revised protocol will be made available to complainants by December 15, 2018, with a 30-day window of opportunity to provide feedback before the draft protocol is finalized.

5. **Functional Behavioral Assessments and Behavior Intervention Plans.** The District desires to improve the depth of exposure, experience, and training for staff regarding the development and implementation of FBAs and BIPs for SWDs. To that end, the District will take the following measures in regard to training staff:

- a. By March 30, 2019, the District will provide face-to-face and/or Canvas (Canvas is an online portal for electronic professional development courses) training to District-Level SES Staff on the following:
  - i. Functional Behavioral Assessments, including antecedents and consequences of behavior and data collection. This will include an overview of trauma-informed practices, and will include the role of trauma as it may relate to antecedents, expressions, and consequences of behavior;
  - ii. Behavioral Intervention Plans, including the development, data collection and review/revision of BIPs. Additional training will be provided as developed in conjunction with district-wide training on trauma informed practices that will be incorporated into the FBA and BIP process.
- b. By June 30, 2019, the District will provide face-to-face and/or Canvas training to all School-Based SES Staff on the same training outlined in paragraph 5.a. above.

6. **IEP Development, IEP Meetings, and IEP Progress Monitoring for Students Assigned to ALPs.** Complainants have raised concerns regarding the composition of IEP teams, as well as the development of IEPs for SWDs assigned to Alternative Learning Programs as a result of behavioral or disciplinary concerns. The WCPSS is currently in the process of reviewing its ALP offerings for the 2019-2020 school year. In addition to completing this review, the district shall review and revise practices on these issues. The development of the amended practices will include the following steps:

- a. No later than November 30, 2018, the District will provide clarification to District-Level SES Staff and School-Based SES Staff – that, for SWD who are placed in alternative learning programs, the IEP team shall include teachers from both the student's base school as well as the alternative program/school.
- b. No later than November 30, 2018, the District will develop a written overview of ALP options within the District, to be provided to parents of students prior to MDR meetings if the student is recommended for long-term suspension. The purpose of this overview will be to provide greater information to parents regarding the type of services available to students at ALPs and to assist the IEP team as it makes decisions regarding services during the term of disciplinary removal. Included in the overview will be an explanation that, in the event an IEP team determines that a part-time school option on its own will be insufficient to provide

FAPE, it may recommend that the student receive a combination of a part-time school option and homebound to ensure the student has access to FAPE.

- c. No later than November 30, 2018, the District will provide clarification to both District-Level SES Staff and School-Based SES Staff that for students placed in ALPs or on Homebound with services that are less than a full day as a result of a temporary disciplinary assignment (such as during the term of a long-term suspension), the IEP team shall memorialize the proposals and rejections regarding the accommodations, special education and related services to be provided to the student in the meeting minutes and the DEC5.
  - d. No later than November 30, 2018, the District will provide clarification to ALP staff of the mandate of ensuring IEP quarterly progress reports are developed collaboratively with ALP staff who work directly with the student and the EC Case manager at the student's base school.
7. **IEP Development for Students Placed on Homebound or in Day Treatment by WCPSS.** Complainants have raised concerns about IEP development and revision for students placed by WCPSS on homebound or in day treatment. WCPSS will review and revise its practices on this issue by taking the following steps:
- a. No later than November 30, 2018, the District will provide clarification to District-Level SES Staff and School-Based SES Staff that for SWDs placed on Homebound: (a) services on Homebound must include related services, when needed to enable the student to access FAPE; and (b) clarification that placement on Homebound is not a behavioral intervention.
  - b. No later than November 30, 2018, the District will provide clarification to District-Level SES Staff and School-Based SES Staff that for SWDs placed by WCPSS on Homebound or in day treatment, the IEP team shall memorialize the proposals and rejections regarding the accommodations, special education and related services to be provided to the student in the meeting minutes and DEC5.
8. **Related Services.** Complainants have raised concerns about a lack of consideration of related services for SWDs, particularly prior to placement in a more restrictive setting or an ALP. WCPSS will review and revise its practices on this issue by taking the following steps:
- a. No later than January 30, 2019, the District will notify and inform District-Level SES Staff and School-Based SES staff with regard to the inclusion of counseling, social work services, and psychological services as related services under the IDEA and the process for determining whether such related services are necessary for the delivery of FAPE.
  - b. No later than January 30, 2019, The District will also notify and inform School-Based SES Staff that the provision of counseling, social work services, or psychological services as related services may constitute supplemental aids and services that permit a student to remain in a less restrictive setting, and, when appropriate, should be considered prior to the placement of a SWD in a more restrictive setting.

**9. Support and Placement Options for Students with Mental Health Needs.**

- a. WCPSS has already completed training to elementary school principals on the Tiered Behavior Resource Guide (TBR). By March 31, 2019, WCPSS will expand this training to school staff, including the remaining principals, APs, counselors, behavior support staff and MS/HS Special Education Department Chairs and SES staff. The TBR is a guidance document developed in collaboration with the Special Education Services, Counseling and Student Services, Academics, and Intervention departments within WCPSS. The TBR is a working document and iterations will be updated on a regular basis. It includes numerous research-based positive behavioral intervention options, as well as professional development and curriculum resources. It has been shared with school counselors, social workers, psychologists and special education services staff. Teachers, principals, and student support staff are encouraged to utilize a variety of behavioral interventions to accomplish a positive change in student behavior. The purpose of this document is to visualize a multi-tiered framework for behavior and to align resources within the district. A copy of this document will be shared with Complainants as part of the resolution process of the complaint.
- b. WCPSS is currently engaged in district-wide development and deployment of training for trauma-informed practices. District and school level trainers are being developed in the Community Resiliency Model (CRM). By June 30, 2019, District Level SES Staff and School-Based SES Staff will receive the two-day orientation of Basic Skills CRM course.
- c. The WCPSS Office of Equity Affairs currently provides cultural proficiency training to teachers, administrators and support staff, which includes discussion of the systemic impact of race and racism on student outcomes.

**10. Services for named students.** The Parties agree that the matters involving [REDACTED] and [REDACTED] have been addressed and do not warrant further action by the Board. The Board has offered services for each of the remaining named students as outlined in Exhibits one through five attached hereto and incorporated herein by reference.

**11. Compensatory Services for Unnamed Students from the 2017-2018 school year.** The District has initiated and will complete an audit of the files of all SWDs from the 2017-2018 school year who were suspended for 20 or more cumulative days, including students with a long-term suspension recommendation. If the audit reveals that the student did not receive services beginning on Day 11 of the suspension, or timely appropriate transportation, or both, the District will offer compensatory services that are individually crafted based on the student's unique needs and IEP goals. The District will offer to initiate these services during the spring semester of 2019 and the following summer.

**12. Information to be Provided to Complainants.** The District will provide the following information to Complainants pursuant to the schedule outlined below:

- a. December 15, 2018

- i. *Transportation*: a copy of the revised process referenced in paragraph 4, with a 30-day window of opportunity to provide feedback;
  - ii. *IEP Development, Meetings, Progress Monitoring and Placement*: confirmation of compliance with notifications referenced in paragraphs 6.a., 6.c, 6.d, 7.a, and 7.b;
  - iii. *ALP Placements*; a copy of the ALP handout referenced in paragraph 6.b;
- b. January 30, 2019
  - i. *Provision of Educational Services by the 11<sup>th</sup> Day*: a copy of the revised protocol referenced in paragraph 3.b., with a 30-day window of opportunity to provide feedback.
- c. March 30, 2019
  - i. *Conducting Timely MDRs*: a copy of the training materials referenced in paragraph 2.
  - ii. *Related Services*: confirmation of compliance with notifications references in paragraphs 8.a. and 8.b.;
- d. April 31, 2019
  - i. *FBA's and BIPs*: a copy of the training materials referenced in paragraphs 5.a. and 5.b.

### **13. Monitoring and Auditing.**

- a. For the 2018-19 and 2019-20 school years, the District will monitor MDR procedural compliance and will offer compensatory services for any student who the District determines does not receive FAPE as a result of an untimely MDR meeting. All compensatory services will be individually crafted based on the student's unique needs and IEP goals.
- b. For the 2018-19 and 2019-20 school years, the District will monitor the continuation of educational services on day 11 and beyond and will offer compensatory services for any student the District determines did not receive FAPE as a result of a failure to offer educational services on day 11 or beyond. All compensatory services will be individually crafted based on the student's unique needs and IEP goals.
- c. For the 2018-19 and 2019-20 school years, the District will monitor the provision of transportation services to students placed in Alternative Learning Programs and will offer compensatory services for any student the District determines did not receive FAPE as a result of the failure to offer timely transportation services. All compensatory services will be individually crafted based on the student's unique needs and IEP goals.
- d. For the 2019-2020 and 2020-2021 school years, the District will audit 5% of the files for SWD assigned to ALPs after a recommendation for LTS, for the purpose of shaping further training/procedures/practices within the District. In addition, the District will offer compensatory services to any student the District determines did not receive FAPE. This audit review will include at least the following:
  - i. the composition of the IEP team;
  - ii. the quality of the FBA – including presence of meaningful data concerning the antecedents and consequences of the target behavior – and BIP;
  - iii. after district-wide training has occurred, whether a discussion of trauma-informed practices is evident in the record;



- iv. the appropriateness of the IEP progress reports generated;
- v. the grades/credits issued/earned; and
- vi. whether consideration of related services, including counseling, social work services, or psychological services is evident in the record.

**14. Release and Discharge.** The Complainants, for themselves, their successors and assigns, do hereby agree to forever discharge, release and agree to indemnify the Board, its successors and assigns, and all employees, officers and agents of the Board from any and all allegations from the 2017-2018 school year contained in the Complaint filed with the DPI on behalf of the seven named students and agree to withdraw their Complaint with DPI.

**15. No Admission of Liability.** The Board does not admit liability for any alleged incident(s), violations, omissions, and/or alleged damages. The Board's endorsement of this Agreement shall not be construed as an admission of liability with respect to any claim arising under the IDEA 20 U.S.C. § 1401 *et seq*; North Carolina General Statutes § 115C-106 *et seq*; 42 U.S.C. § 1983; Section 504 of the Rehabilitation Act, 29 U.S.C. § 79(a); the Americans with Disabilities Act, 42 U.S.C. §§ 12101-12213; or any other law. The Agreement and its execution and implementation shall not be construed as, and shall not be admissible in any proceeding as evidence of: (1) any admission by the Board of any improper action against or concerning the seven named students or those students similarly situated; or (2) any unlawful practice under, or violation of, any federal, state or local statute, regulation, or ordinance.

**16. General Terms.**

- a. This Agreement is binding upon the Complainants and their successors, heirs, guardians, and assigns and the current and future Board, its members, officers, administrators, and employees.
- b. This Agreement shall be governed by and interpreted in accordance with the laws of the State of North Carolina.
- c. The Parties and their attorneys agree not to disparage one another, directly or indirectly, in connection with any matters set forth in the Complaint. The parties further acknowledge that Legal Aid of North Carolina may wish to share this Settlement Agreement with their Advocacy Partners, parents, and other members of the community, and that the WCPSS may also choose to share this agreement with a variety of community stakeholders. The parties agree to include with any release of the Settlement Agreement or any written discussion regarding the substantive parameters of this Agreement, with the following statement:

The Wake County Public Schools and Legal Aid of North Carolina have entered into an agreement addressing the concerns raised by Legal Aid of NC in a systemic state complaint filed with the Department of Public Instruction in 2018. The focus of the complaint was on services provided and procedures followed in regard to students with disabilities who were also impacted by either mental health diagnoses or behavioral difficulties while at school. While many of the strategies and systems outlined in the Agreement were already underway by the district, this Agreement also outlines many processes and services for students


with special needs that is the direct result of the collaboration of the Wake County Public Schools and Legal Aid of North Carolina. Moving forward, it is the hope and desire of both parties to continue to look for opportunities that may foster collaboration for the benefit and support of special needs students.

- d. This Agreement is entered into voluntarily by the parties and with full knowledge of any potential constitutional, statutory, or other rights each may have.
- e. This Agreement constitutes the entire agreement between the parties. It supersedes any prior understanding or agreement between them respecting the subject matter. There are no representations, understandings, or agreements, oral or written, relating to the subject matter of this Agreement, except those fully expressed herein.

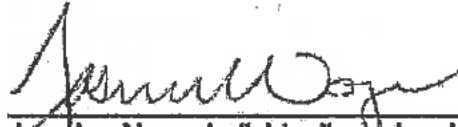
This the 13th day of February 2019.


**COMPLAINANTS**

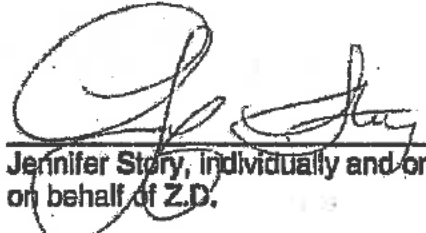
**WAKE COUNTY BOARD OF EDUCATION**

  
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Carl Carson, Individually and  
on behalf of J.S., K.D., and J.H.

 2/13/19  
\_\_\_\_\_  
Karen Hamilton  
on behalf of the Board of Education

  
\_\_\_\_\_  
Jasmina Nogo, individually and on behalf of  
on behalf of Z.S. and K.L.S.

  
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Hope Williams, individually and on behalf of  
on behalf of T.C.

  
\_\_\_\_\_  
Jennifer Story, individually and on behalf of  
on behalf of Z.D.